No. 93-1660

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF ARIZONA, *Petitioner*

v.

ISAAC EVANS, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE WASHINGTON LEGAL FOUNDATION, ALLIED EDUCATIONAL FOUNDATION, CITIZENS FOR LAW AND ORDER, PARENTS' ASSOCIATION TO NEUTRALIZE DRUG & ALCOHOL ABUSE, APACHE COUNTY ATTORNEY'S OFFICE, GILA COUNTY ATTORNEY'S OFFICE, NAVAJO COUNTY ATTORNEY'S OFFICE, PINAL COUNTY ATTORNEY'S OFFICE, CITY OF GLENDALE POLICE DEPARTMENT, CITY OF TEMPE, VICTIM/WITNESS SERVICES, THE SEXUAL ASSAULT RECOVERY INSTITUTE, PARENTS OF MURDERED CHILDREN, AND CASA DE YUMA AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the exclusionary rule requires the suppression of evidence obtained by law enforcement officers acting in reliance upon a facially-valid police radio report that a warrant for the defendant's arrest exists.

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INTEREST OF THE AMICI

The Washington Legal Foundation (WLF) is a national non-profit, public interest law and policy center with over 100,000 members and supporters nationwide whose interests WLF represents. WLF engages in litigation and

the administrative process in a variety of areas of the law, and devotes substantial resources to criminal law issues and victims' rights. WLF and its members are deeply concerned about the toll that illegal drugs and crime take on law-abiding citizens, and believe that law enforcement should not be hampered by a wooden application of the exclusionary rule.

WLF believes that this Court's decision in *United States* v. *Leon*, 468 U.S. 897 (1984), which established the so-called "good faith" exception to the exclusionary rule, is applicable in this case. WLF has appeared before this Court as an *amicus curiae* in a number of cases dealing with criminal law issues and the exclusionary rule. See, *e.g.*, *Davis* v. *United States*, 62 U.S.L.W. 4587 (U.S. June 24, 1994); *Payne* v. *Tennessee*, 111 S. Ct. 2597 (1991).

The Allied Educational Foundation (AEF) is a non-profit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, including criminal law and public policy. AEF has appeared before this Court as an amicus curiae along with WLF in a number of criminal law cases raising constitutional issues.

Citizens for Law and Order (CLO) is a non-profit, grass-roots organization founded in 1970 in Oakland, California, to counter the erosion in the effectiveness of the criminal justice system. CLO has assisted concerned citizens in strengthening and preserving law and order in their communities, states, and nation through educational, informational, and civic programs.

Parents Association to Neutralize Drug & Alcohol Abuse, Inc. (PANDAA) is a national non-profit organization dedicated to curtailing illegal drug use, especially by our nation's youth.

The Maryland Coalition Against Crime (MCAC) is a non-profit organization based in Baltimore, Maryland. MCAC works for enactment of measures that promote tougher law enforcement and the rights of crime victims.

The Apache County, Gila County, Navajo County, and the Pinal County Attorney's Offices charge and prosecute those arrested for violating criminal laws. The City of Glendale Police Department arrests criminal suspects and necessarily relies on information from other law-enforcement agencies in order to carry out its law-enforcement duties. The City of Tempe is a municipality in Arizona which has a police department and city prosecutor whose duties include the arrest and prosecution of criminal offenders. All of these governmental units are concerned that the lower court decision in this case will unduly hamper their ability to prosecute successfully criminal defendants to the detriment of the law-abiding public in their respective jurisdictions.

The Victim/Witness Services, the Sexual Assault Recovery Institute, Parents of Murdered Children (Tucson Chapter), and Casa de Yuma are non-profit victim services organizations in Flagstaff, Phoenix, Tucson, and Yuma, Arizona, respectively. They are concerned that the lower court ruling would hamper the successful prosecution of violent offenders and thereby allow criminals to continue to prey upon innocent victims.

All of the amici are concerned with the implications of the lower court decision, and believe that they can provide a broader perspective to this case that will assist the Court in deciding it. This brief is filed with the written consents of the parties, which are on file with the Clerk of the Court.

STATEMENT

1. On January 5, 1991, respondent Isaac Evans drove the wrong way down a one-way street in Phoenix, Arizona, passing in front of a patrol car in which Officers

Sargent and Lumley were filling out paperwork. When Officer Sargent directed respondent to stop and asked him for his driver's license, respondent answered that his license had been suspended. Officer Sargent returned to his patrol car in order to check the computer to determine whether respondent was the subject of an outstanding arrest warrant. After doing so, Officer Sargent was told that there was an outstanding arrest warrant for respondent for the misdemeanor of failing to appear in court on the traffic offense of driving without a license. The officers placed respondent under arrest because of the warrant. While he was being handcuffed, respondent discarded a marijuana cigarette. After searching respondent's car, the officers discovered an additional quantity of marijuana. Pet. App. 2a, 22a-23a; J.A. 15-25.

Unbeknownst to the field officers at the time of the arrest, the arrest warrant was no longer in effect. Respondent was scheduled to appear on December 12, 1990, in the East Phoenix Justice Court for the traffic offense of driving with a suspended license, but he did not show up. The next day, that court issued a bench warrant for respondent's arrest. Six days later, however, on December 19, respondent appeared in the Central Phoenix Justice Court, and the justice of the peace ordered the warrant quashed. Unfortunately, that fact was not conveyed to the sheriff's office, which, upon his request, informed Officer Sargent that the December 13 warrant for respondent's arrest was still outstanding. Pet. App. 2a, 22a-23a; J.A. 26-30.

2. Respondent was charged with possession of a controlled substance in violation of Arizona law. Before trial, he moved to suppress the marijuana, claiming that his arrest was unlawful, since the warrant had been quashed. He also argued that the evidence should not be admitted under the "good faith" or "reasonable mistake" exception to the exclusionary rule adopted in *United States* v. *Leon*, 468 U.S. 897 (1984), since "the exclusionary rule does apply where the police department is responsible for not keeping its computer entries up to date." J.A. 5.

At an evidentiary hearing on the motion, J.A. 14-54, officials from the court clerk's and sheriff's offices described the procedure followed when a bench warrant is quashed. In that situation, an officer at the court clerk's office telephones the jail and so advises the sheriff's office. The court clerk records in the case file the nature of the call and the person at the sheriff's office who received it. The clerk later will "double-check" the case file before disposing of it. J.A. 29-35. The sheriff's office employee also records the information in the file jacket, including the date the information is received and the identity of the person sending it, before running a warrant check to ensure that the warrant has been cleared. J.A. 39-41, 44-45. In respondent's case, however, there was no notation in the court file or the sheriff's file that such a telephone call was made. The witnesses testified that the omission indicated that no such call had been placed, but they also conceded the possibility that a call had been made without being recorded. J.A. 29-32, 42-43.[1]

The court granted respondent's suppression motion. J.A. 53. The court did not make a finding as to whether the clerk's office was negligent in failing to transmit, or the sheriff's office was negligent in failing to record, the information that the warrant had been quashed. Instead, the court held that since both offices were state actors, the state was negligent in not properly recording the cancellation of the warrant, and suppression was required. J.A. 51-52.

3. The state appealed, and the Arizona Court of Appeals, by a divided vote, reversed the trial court's suppression order. Pet. App. 22a-40a. The court of

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[1] The clerk gave the opinion that the omission was due to the fact that a new judge handled respondent's case and wrote the order quashing the warrant on a form in a location and manner different from the ones that had been used by the regular judge. J.A. 32. The trial court, however, later sustained a defense objection to similar testimony by the clerk, on the ground that her opinion was speculative. J.A. 35.

appeals started from the premise that "the purpose of the exclusionary rule is to deter unlawful *police conduct*," *id.* at 32a (emphasis in original), and that no such conduct was at issue here, *id.* at 34a-35a. The court explained that the arresting officers' actions were "objectively reasonable" under *Leon*, since they "had absolutely no way of knowing that [respondent's] arrest warrant had been quashed." *Id.* at 34a. The court added that "the exclusionary rule is not intended to deter justice court employees or Sheriff's office employees who are not directly associated with the arresting officers or the arresting officers' police department." *Id.* As a result, the court concluded that suppressing evidence due to "a clerical error outside of the control of the Phoenix Police Department would not deter the justice court employees or the Sheriff's Office employees from making such errors in the future," nor would suppression deter the police from relying on computer reports of outstanding warrants, since "there was no[ ] indication" that the arresting officers or the police department was negligent in relying on the report of the outstanding arrest warrant. *Id.* at 34a-35a.

4. Respondent appealed, and the Arizona Supreme Court, by a divided vote, reversed the judgment of the state court of appeals. Pet. App. 1a-21a. The court assumed that the clerk, rather than the sheriff's office, was negligent in reporting existence of the arrest warrant, but concluded that the exclusionary rule should be applied nonetheless. *Id.* at 5a, 8a. The court distinguished *Leon* on the ground that it involved a warrant based on an insufficient showing of probable cause, whereas this case involved a warrantless arrest. *Id.* at 6a. The court found *Leon* inapplicable, since this case involved "the performance of purely ministerial functions, not the exercise of judicial discretion." *Id.* at 9a. The court deemed it "useful and proper" to apply the exclusionary rule "where negligent record keeping (a purely clerical function) results in an unlawful arrest," because suppressing evidence "will hopefully serve to improve the efficiency of those who keep records in our criminal justice system." *Id.* Expressing horror at the prospect that "[a]s automation

increasingly invades modern life, the potential for Orwellian mischief grows," the court found exclusion of evidence a sensible result, because, in the court's view, "[i]t is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness." *Id.* at 10a. Finally, the court found "anomalous" a rule permitting evidence to be introduced if court personnel, rather than police officers, were to blame for poor recordkeeping. *Id.* at 11a.[2]

SUMMARY OF ARGUMENT

A. This Court held in *Leon* that the exclusionary rule should not be applied to police the courts' mistakes in issuing search (or arrest) warrants. That rule governs this case, because personnel in the Phoenix courts, not the sheriff's office, were responsible for failing to record and transmit the recall of the arrest warrant for respondent. Since police misconduct did not cause any error in the recordkeeping or transmission of that information, application of the exclusionary rule is unwarranted.

B. Suppression is inappropriate because it was reasonable for the officers to rely on the radio report that respondent was subject to arrest. This Court has indicated that police officers should not be held liable in damages for relying on such reports even if they are erroneous, and has said that the same test of objective reasonableness governs the good faith exception to the exclusionary rule. Courts should be more reluctant to exclude evidence than to impose damages, since exclusion penalizes the blameless. Since the police should be encouraged to rely

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[2] In the brief in opposition, respondent's counsel notes that he is unaware of respondent's location, perhaps indicating that respondent has left the jurisdiction. Respondent's absence does not render this case moot, because the state would be free to prosecute respondent if the judgment below is reversed. See, *e.g.*, *United States* v. *Sharpe*, 470 U.S. 675, 681 n.2 (1985) (collecting cases); *United States* v. *Rodriguez*, 469 U.S. 1 (1984).

on police reports that an arrest warrant exists for a suspect, the exclusionary rule should not be applied.

ARGUMENT

THE EXCLUSIONARY RULE SHOULD NOT BE APPLIED TO SUPPRESS EVIDENCE OBTAINED BY THE POLICE RELYING ON A FACIALLY-VALID REPORT OF AN ARREST WARRANT OUTSTANDING FOR A SUSPECT

Since the days of the hue and cry, law enforcement officers have relied on the citizenry and their fellow officers for physical assistance and information in criminal investigations. Consulting fellow officers or other knowledgeable officials is a particularly valuable practice and is commonly done by patrol officers who must arrest a suspect, in light of the risk that arises in that setting. Because even routine encounters can result in violent or fatal confrontations if a suspect fears that he will be arrested,[3] it is standard practice for law enforcement officers to determine whether there is an arrest warrant outstanding for the suspect of even a minor traffic offense. Ordinarily, an officer will contact the police dispatcher at headquarters via radio to check for what is known in the vernacular as outstanding "wants and warrants," or he will run a computer check himself if his patrol car is adequately equipped. That "routine" or "standard" practice is followed nationwide by law enforcement agencies.[4]

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[3] See, *e.g.*, *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977); *United States* v. *Robinson*, 414 U.S. 218, 234-35 & n.5 (1973); *Adams* v. *Williams*, 407 U.S. 143, 148 n.3 (1972); Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Crim. L.C. & P.S. 93 (1963).

[4] See, *e.g.*, *People* v. *Mitchell*, 678 P.2d 990, 991 (Colo. 1984) (describing practice as a "routine procedure"); *People* v. *Jennings*, 430 N.E.2d 1282, 1283 (N.Y. 1981) ("standard procedure"); 2 W. LaFave, *Search and Seizure* § 3.5, at 2 (2d ed. 1987); *e.g.*, *United States* v. *Hensley*, 469 U.S. 221, 224 (1985).

If an officer makes an arrest based on an outstanding arrest warrant for the suspect and that warrant is later upheld as valid, the Fourth Amendment has been satisfied, and any evidence obtained as the result of the arrest (and any ensuing search of the suspect or his vehicle) is admissible. See, *e.g.*, *New York* v. *Belton*, 453 U.S. 454 (1981); *United States* v. *Robinson*, 414 U.S. 218 (1973). By contrast, if an officer arrests a suspect after being told that there is a warrant for his apprehension, but in fact there is no such warrant or the warrant was erroneously issued (because, for example, there was insufficient evidence to establish probable cause), the arrest is invalid. Otherwise, law enforcement officers could readily undo the Fourth Amendment simply by working in teams. See, *e.g.*, *Whiteley* v. *Warden*, 401 U.S. 560 (1971).

The question in this case does not involve the lawfulness of respondent's arrest. The bench warrant issued on December 13, 1990, for his arrest was quashed three weeks before he was stopped for a traffic offense and thus cannot justify the seizure. "A void warrant cannot be the basis for a valid arrest." *State* v. *Trenidad*, 595 P.2d 957, 958 (Wash. App. 1979). But the issue whether the Fourth Amendment has been violated is distinct from the question whether the exclusionary rule should be applied, and only the latter question is relevant here.

It is settled that the exclusionary rule should not automatically be applied to every Fourth Amendment violation. The Court has made clear on numerous occasions that the exclusionary rule, in Professor Anthony Amsterdam's words, "is a needed, but grudgingly taken, medicament; no more should be swallowed than is needed to combat the disease." *Search, Seizure, and Section 2255: A Comment*, 112 U. Pa. L. Rev. 378, 389 (1964); see, *e.g.*, *Stone* v. *Powell*, 428 U.S. 465 (1976); *United States* v. *Calandra*, 414 U.S. 338 (1974). Moreover, this Court has held on three occasions -- *United States* v. *Leon*, 468 U.S. 897 (1984), *Massachusetts* v. *Sheppard*, 468 U.S. 981 (1984), and *Illinois* v. *Krull*, 480 U.S. 340 (1987) -- that the exclusionary rule should not be applied

when law enforcement officers reasonably rely on a search warrant or statute authorizing a search. The benefits from suppressing evidence in those circumstances, the Court concluded, are "marginal or nonexistent," so the exclusionary rule should not be invoked. *Leon*, 468 U.S. at 922.

The lower courts have reached different conclusions about whether the exclusionary rule should be applied in the setting of this case: *viz.*, cases in which law enforcement officers make an arrest based on a warrant that was valid when it was issued, but was later satisfied, quashed, or canceled before a suspect is arrested. Some courts, in cases handed down before and after *Leon*, have held that an arrest based on an invalid or recalled warrant requires suppression if the mistake is due to poor recordkeeping by law enforcement officials or by the government generally.[5] By contrast, other courts have

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[5] See, *e.g.*, *State* v. *Peterson*, 830 P.2d 854 (Ariz. Ct. App. 1991), cert. denied, 113 S. Ct. 465 (1992); *People* v. *Ramirez*, 668 P.2d 761 (Cal. 1983); *People* v. *Howard*, 162 Cal. App. 3d 8, 208 Cal. Rptr. 353 (1985); *People* v. *Fields*, 785 P.2d 611 (Colo. 1990); *People* v. *Mitchell*, 678 P.2d 990 (Colo. 1984); *Albo* v. *State*, 477 So. 2d 1071 (Fla. Ct. App. 1985); *People* v. *Mourecek*, 566 N.E.2d 841, 844-45 (Ill. Ct. App. 1991); *State* v. *Taylor*, 468 So. 2d 617 (La. Ct. App. 1985); *Ott* v. *State*, 600 A.2d 111 (Md. 1992), cert. denied, 113 S. Ct. 295 (1992); *People* v. *Jennings*, 430 N.E.2d 1282 (N.Y. 1981); *State* v. *Gough*, 519 N.E. 2d 842 (Ohio Ct. App. 1986); *State* v. *Trenidad*, 595 P.2d 957 (Wash. Ct. App. 1979); cf. *United States* v. *Mackey*, 387 F. Supp. 1121 (D. Nev. 1975) (same result under Due Process Clause). The court's remarks in *Mackey* are characteristic of the rationale applied by these courts: "Once the warrant was satisfied, five months before defendants arrest, there no longer existed any basis for his detention, and the Government may not now profit by its own lack of responsibility." 387 F. Supp. at 1125. Some courts that have required suppression when the police can be faulted for poor recordkeeping have implied that the contrary rule would apply in situations when law enforcement authorities are blameless. See, *e.g.*, *Ott* v. *State*, 600 A.2d at 115-16 (quoting 2 W. LaFave, § 3.5(d), at 21-22) ("police may not rely upon incorrect or incomplete information when they are at fault in permitting the records to remain uncorrected").

held that suppression is appropriate only if police authorities are blameworthy or negligent in some manner.[6]

In our view, the latter approach is the correct one. The only legitimate justification for the exclusionary rule is its supposed deterrent effect on unlawful police conduct. Where the police have acted in a reasonable manner -- that is, when the police have engaged in conduct that society does not wish to deter -- there is no justification for excluding highly probative evidence due to a mistake by a law enforcement officer, or anyone else for that matter. Suppression is too costly a price for society to be required to pay as a matter of federal law.

A. The Sole Justification For The Exclusionary Rule Is Its Presumed Deterrent Effect On Police Misconduct

At the outset of its discussion, the Arizona Supreme Court, citing *Weeks* v. *United States*, 232 U.S. 383 (1914), and *Mapp* v. *Ohio*, 361 U.S. 643 (1961), announced without elaboration that the "deterrence of police misconduct is but one of the reasons that have been advanced in support of" the exclusionary rule. Pet. App. 4a n.1. Later in its opinion, the court held that suppression was necessary, not because it would deter

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[6] See, *e.g.*, *United States* v. *DeLeon-Reyna*, 930 F.2d 396 (5th Cir. 1991) (en banc); *United States* v. *Towne*, 870 F.2d 880 (2d Cir.), cert. denied, 490 U.S. 1101 (1989); *Taggart* v. *County of Macomb*, 587 F. Supp. 1080 (E.D. Mich. 1982); *In re R.E.G.*, 602 A.2d 146 (D.C. Ct. App. 1992); *Childress* v. *United States*, 381 A.2d 614 (D.C. Ct. App. 1977); *State* v. *Cross*, 396 A.2d 604 (N.J. Super. Ct. 1978); *State* v. *Somfleth*, 492 P.2d 808 (Or. Ct. App. 1972); *Commonwealth* v. *Riley*, 425 A.2d 813 (Pa. Super. Ct. 1981); *Durio* v. *State*, 807 S.W.2d 876, 878 (Tex. Ct. Crim. App. 1991); *State* v. *Lanoue*, 587 A.2d 405 (Vt. 1991). The most common example given of non-negligent conduct is the failure immediately to correct computer records. As the D.C. Court of Appeals wrote in *In re R.E.G.*, 602 A.2d at 149, upholding a three-day delay in updating a suspect's computer file, "[i]t is not reasonable to require law enforcement agencies to instantly update their computer information and the Fourth Amendment does not impose such a stringent demand."

misconduct by the police, but because it might improve the recordkeeping efficiency of clerks in the criminal justice system. *Id.* at 9a.

Those observations indicate that the court below approached this issue from the wrong perspective. The Fourth Amendment does not explicitly or implicitly require suppression of wrongfully seized evidence. The Court repeatedly has made clear that the only legitimate justification for the exclusionary rule is its supposed deterrent effect on police misconduct and that that purpose must be kept in mind when determining whether suppression is appropriate.

1. The exclusionary rule was initially justified as a remedy for the violation of the defendant's right of privacy protected by the Fourth Amendment. See *Weeks* v. *United States*, 232 U.S. at 398. But this Court has repeatedly and squarely rejected that rational, explaining succinctly in *Elkins* v. *United States*, 364 U.S. 206, 217 (1960), that "[t]he rule is calculated to prevent, not to repair. Its purpose is to deter -- to compel respect for the constitutional guarantee in the only effectively available way -- by removing the incentive to disregard it." The exclusionary rule is an irrational remedy for an unlawful invasion of privacy, since it utterly fails to remedy the insult suffered by innocent victims of unreasonable searches and because it supplies a benefit "wholly disproportionate to the wrong suffered" by the guilty. Henry Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif. L. Rev. 929, 951 (1965); see, *e.g.*, *Stone*, 428 U.S. at 486; *United States* v. *Janis*, 428 U.S. 433, 446 (1976); *Calandra*, 414 U.S. at 347; *Linkletter* v. *Walker*, 381 U.S. 618, 637 (1965); see also, *e.g.*, *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) ("[t]he exclusionary rule provides no remedy for completed wrongs"). Whatever the weight of the original rationale offered to defend the exclusionary rule may be, over the past three decades this Court has made clear that the only viable contemporary justification for the rule is its presumed deterrent effect on police misconduct.

The plurality in *Mapp* v. *Ohio* suggested that the Constitution requires the exclusionary rule, but since then the Court repeatedly has stated that the Fourth Amendment imposes no such requirement. As this Court has explained, the Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons." *Stone*, 428 U.S. at 486. Given the inherent trustworthiness of physical evidence and the societal costs of suppression, application of the exclusionary rule has been carefully "restricted to those areas where its remedial objectives are thought most efficaciously served," *Calandra*, 414 U.S. at 348, which would not be possible if the Fourth Amendment dictated suppression of evidence.

Finally, the last alternative rationale offered for the exclusionary rule -- *i.e.*, its usefulness in protecting the integrity of the judicial process by barring the introduction of tainted evidence, *Elkins*, 364 U.S. at 222-23 -- also has not withstood the test of time. In numerous cases the Court has limited the standing of defendants to assert Fourth Amendment claims and has permitted unlawfully seized evidence to be used for purposes, such as impeachment of the defendant, that would be impermissible if the exclusionary rule protected the integrity of the judicial process. See, *e.g.*, *United States* v. *Padilla*, 113 S. Ct. 1936 (1993); *United States* v. *Havens*, 446 U.S. 620 (1980). "Judicial integrity clearly does not mean that the courts must never admit evidence obtained in violation of the Fourth Amendment." *Janis*, 428 U.S. at 458 n.35. As the Court noted in *United States* v. *Peltier*, 422 U.S. 531, 537-38 (1975), judicial integrity is not offended if law enforcement officials reasonably believed "that their *conduct* was in accordance with law even if decisions subsequent to the search or seizure have held that conduct of the type engaged in by the law enforcement officials is not permitted by the Constitution."

This Court made all those points expressly in *United States* v. *Leon*. The Court explained that "[t]he Fourth

Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes clear that the use of fruits of a past unlawful search or seizure 'work[s] no new Fourth Amendment wrong.'" 468 U.S. at 906 (quoting *Calandra*, 414 U.S. at 354). Instead, the exclusionary rule is "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *Id.* (quoting *Calandra*, 414 U.S. at 348). The propriety of applying the exclusionary rule in a particular situation, the Court recognized, turns on "weighing the costs and benefits" of withholding reliable evidence from the truth-seeking process. *Id.* at 907; see *id.* at 908-13 (cataloging instances in which the Court has found suppression unjustified since the possible benefits of suppression did not outweigh its costs). And "the question whether the use of illegally obtained evidence in judicial proceedings represents judicial participation in a Fourth Amendment violation and offends the integrity of the courts 'is essentially the same as the inquiry into whether exclusion would serve a deterrent purpose.'" *Id.* at 921 n.22 (quoting *Janis*, 428 U.S. at 459 n.35). For those reasons, this Court concluded in *Leon* that, because "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial cost of exclusion," the exclusionary rule should not be applied if a law enforcement officer reasonably relies on a search warrant issued by a magistrate. *Id.* at 922.

2. An important corollary to the foregoing rule is that the exclusionary rule cannot reasonably be deemed likely to have any effect, and therefore should not reasonably be applied, unless a Fourth Amendment violation is directly attributable to willful or, at a minimum, negligent misconduct by *law enforcement officers*. This Court has long explained that "[t]he deterrent purpose of the exclusionary rule necessarily assumes that *the police* have engaged in willful, or at the very least negligent, conduct

which has deprived the defendant of some right." *Michigan* v. *Tucker*, 417 U.S. 433, 447 (1974) (emphasis added). Courts apply the exclusionary rule in the hope of "instill[ing] *in those particular investigating officers, or in their future counterparts*, a greater degree of care toward the rights of an accused." *Id.* (emphasis added). Because "the purpose of the exclusionary rule is to deter unlawful *police conduct*," evidence is properly suppressed "only if it can be said that *the law enforcement officer* had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Peltier*, 422 U.S. at 542 (emphasis added); see also *Krull*, 480 U.S. at 348-49; *Michigan* v. *DeFillippo*, 443 U.S. 31, 38 n.3 (1979); *Stone*, 428 U.S. at 539-40; *Janis*, 428 U.S. at 459.

As this Court explained in *Leon* "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates." 468 U.S. at 916. Experience, the Court noted in *Leon*, also militates in favor of that principal. "[T]here exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Id.* (footnote omitted). Beyond that, the Court in *Leon* "discern[ed] no basis, and [was] offered none, for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate." *Id.* at 916 (footnote omitted). Moreover, "to the extent that the rule is thought to operate as a 'systemic' deterrent on a wider audience, it clearly can have no such affect on individuals empowered to issue search warrants." *Id.* at 917 (footnote omitted). As the Court elaborated in *Leon*, "[j]udges and magistrates are not adjuncts to the enforcement team;" they are "neutral judicial officers" with "no stake in the outcome of particular criminal prosecutions," so "[t]he threat of exclusion thus cannot be expected significantly to deter them." *Id.* Finally, because it is unnecessary to suppress evidence to inform judicial officers of their errors, the application of a

reasonable mistake exception to the exclusionary rule would not increase the number or risk of Fourth Amendment violations. *Id.*

This Court applied those principles to uphold the admission of wrongfully seized evidence in the companion case of *Massachusetts* v. *Sheppard*. There, the police applied for a warrant to search the home of a murder suspect. The judge who considered the application and supporting affidavit found probable cause to search the home of the suspect for, among other things, the murder weapon, but he did not make some clerical modifications sought by the officers in the form search warrant normally used for drug cases in order to refer to items in the affidavit, rather than evidence of a narcotics crime. The officers who executed the search, however, limited its scope to the items in the affidavit. This Court concluded that the officers' conduct was "objectively reasonable and largely error-free." 468 U.S. at 990. The officers brought the defects in the warrant to the judge's attention; they were assured by the judge that the defects had been corrected; and they limited their search to what they reasonably believed they had requested. This Court noted that "[a]n error of constitutional dimension may have been committed with respect to the issuance of the warrant," because it did not correctly describe the place to be searched, "but it was the judge, not the police officers, who made the critical mistake." *Id.* Because "the exclusionary rule was adopted to deter unlawful searches by police, not to punish the errors of magistrates and judges," the Court found suppression inappropriate. *Id.* (citation and internal punctuation omitted).

B. Applying The Exclusionary Rule To Suppress Evidence Obtained In Reliance On A Facially-Valid Police Report That There Is A Warrant For A Suspect's Arrest Would Not Further Its Deterrent Purposes

When the question presented by this case is analyzed from the correct perspective, the answer follows logically

from this Court's precedents, for either of two reasons. *First*, it follows from *Leon* and *Sheppard* that the exclusionary rule should not be applied when police misconduct did not cause any error in the recordkeeping or transmission of information about an arrest warrant. That proposition requires reversal of the judgment below, since the best view of the evidence is that personnel at the Central Phoenix Justice Court, not the Maricopa County Sheriff's Office, were responsible for the failure to record and transmit the recall of the arrest warrant for respondent. *Second*, it follows from *Whitley*, *United States* v. *Hensley*, 469 U.S. 221 (1985), *Malley* v. *Briggs*, 475 U.S. 335 (1986), and *Anderson* v. *Creighton*, 483 U.S. 635 (1987), that the exclusionary rule should not be applied when officers on the scene reasonably rely on a radio report that there is an arrest warrant outstanding for a suspect. Because there was no reason for Officers Sargent and Lumley to doubt the reliability of the report that a bench warrant existed for respondent's arrest, their reasonable reliance on that report should not be penalized by the exclusionary rule. For either reason, the judgment below should be reversed.

1. *The exclusionary rule should not be applied if an error in recordkeeping or transmission of arrest warrant information is not due to police misconduct*

Leon and *Sheppard* make clear that the only justification for the exclusionary rule is its presumed deterrent effect on law enforcement misconduct. The rule thus should not be applied to police the actions of the judiciary, rather than law enforcement officers. That broad principle embraces this case. The actions of court personnel, such as clerks, should be deemed actions of the court, not law enforcement. In addition, the best view of the evidence in this case shows that any fault was due to negligence by judicial personnel, not the officers who stopped and arrested respondent.

a. For Fourth Amendment purposes, officials or employees of the court stand in the shoes of the judges they assist. Like judges, officers or employees of the courts are not "adjuncts to the law enforcement team." *Leon*, 468 U.S. at 917. They, too, "have no stake in the outcome of particular criminal prosecutions," *id.*, because they play no role in the apprehension of suspects or acquisition of evidence to establish their guilt. Their role in the criminal justice system is not only limited, since they have little or no decisionmaking authority over the disposition of a case, but also is entirely subordinate to that of the judges for whom such officials work, since there is no administrative responsibility they enjoy in the criminal justice system that cannot be altered or undone by the court. In addition, there is no need to apply the exclusionary rule in order to correct any mistakes made by court personnel. As officers or employees under the supervision of the court, judicial branch personnel are subject to discipline or correction by the judge for whom they work (or the chief judge of the relevant court) in a far more direct and immediate way (such as through suspension) than would be the case if the exclusionary rule were applied. Cf. *INS* v. *Lopez-Mendoza*, 468 U.S. at 1044-45 (describing similar INS mechanism to deter Fourth Amendment violations).

This Court's decision in *Shadwick* v. *City of Tampa*, 407 U.S. 345 (1972), is directly relevant in this regard. The question in *Shadwick* was whether the Fourth Amendment prohibited Tampa from authorizing municipal court clerks to issue arrest warrants for persons charged with the breach of municipal ordinances. In rejecting that claim, this Court made clear that such clerks possessed the "neutrality and detachment" required by the Fourth Amendment to make probable cause determinations because they were "sever[ed] and detach[ed] from law enforcement." 407 U.S. at 350. "The municipal court clerk is assigned not to the police or prosecutor but to the municipal court judge for whom he does much of his work. * * * [H]e is removed from prosecutor or police and works within the judicial branch subject to the

supervision of the municipal court judge." *Id.* at 351. Because of the absence of any showing of "partiality" or "affiliation of these clerks with prosecutors or police," *id.* at 350, the Court unanimously held that municipal court clerks could be vested with the authority to issue arrest warrants.

Also instructive are decisions by this Court and the lower courts on the issue of the immunity enjoyed by court officers in suits brought against them under 42 U.S.C. § 1983. It is well-settled that judges enjoy absolute immunity from suits for money damages for all actions taken in their judicial capacity, unless the actions are taken in the total absence of jurisdiction. See, *e.g.*, *Mireles* v. *Waco*, 112 S. Ct. 286 (1991). Numerous courts have ruled that clerks of courts, like judges, are immune from suits for damages that arise out of their performance of tasks integral to the judicial process.[7] Those courts have

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[7] The courts of appeals in almost every circuit have held that quasi-judicial immunity bars damages claims against court officers based on acts carried out pursuant to a court order. See, *e.g.*, *Sindram* v. *Suda*, 986 F.2d 1459 (D.C. Cir. 1993); *Mitchell* v. *Aluisi*, 872 F.2d 577 (4th Cir. 1989) (clerk's negligence in failing to recall a warrant does not state a constitutional claim); *Foster* v. *Walsh*, 864 F.2d 416, 417 (6th Cir. 1988); *Dellenbach* v. *Letsinger*, 889 F.2d 755, 762-63 (7th Cir.), cert. denied, 110 S. Ct. 1821 (1989); *Valdez* v. *Denver*, 878 F.2d 1285, 1287-90 (10th Cir. 1989); *Rogers* v. *Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (clerk issuing a warrant at the direction of a judge is performing a function to which absolute immunity attaches and the mere fact that an error was made in the carrying out of the judge's instruction is immaterial); *Mullis* v. *United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988); *Dorman* v. *Higgins*, 821 F.2d 133, 136-39 (2d Cir. 1987); *Tarter* v. *Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981); *Slotnick* v. *Garfinkle*, 632 F.2d 163, 166 (1st Cir. 1980) (extending judicial immunity to court clerk who filled out defendant's commitment papers under the official directive of a judge); *Williams* v. *Wood*, 612 F.2d 982, 985 (5th Cir. 1980) (absolute immunity for clerks acting in a non-routine manner under instructions from the judge). Suits against clerks for damages, like suits against judges, are not needed to prevent the occurrence of unconstitutional conduct given the other available safeguards. Moreover, if the immunity enjoyed by

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concluded that the same policies underlying the absolute immunity granted to judges justify a similar grant of immunity to other personnel performing tasks related to the judicial process. Those cases make clear that, at least within the context of immunity, court clerks are considered part of the judiciary, not law enforcement.

If court personnel are properly deemed members of the judiciary, rather than law enforcement, it makes little sense to apply the exclusionary rule to police their mistakes. Since judicial personnel are not "engaged in the often competitive enterprise of ferreting out crime," *Johnson* v. *United States*, 333 U.S. 10, 14 (1948) (footnote omitted), the threat that evidence will be suppressed if they make a mistake in their daily tasks is not likely to have the effect on them that it would have on police officers. If so, then there is all cost and no benefit to application of the exclusionary rule. Perhaps, in the now-famous words of Justice (then-Judge) Cardozo, "the criminal * * * [must] go free because the constable has blundered," *People* v. *Defore*, 150 N.E. 585, 587 (N.Y.), cert. denied, 270 U.S. 657 (1926), but that is only because it is the *constable* who is blameworthy, and not, according to *Leon* and *Sheppard*, a member or employee of the judiciary. In such a case, "[p]enalizing the officer for the

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[7](...continued)
judges did not also extend to their assistants, there is little doubt that "disappointed litigants, blocked by the doctrine of absolute immunity from suing the judge directly, [would] vent their wrath on clerks, court reporters, and other judicial adjuncts." *Dellenbach*, 889 F.2d at 763 (quoting *Scruggs* v. *Moellering*, 870 F.2d 376, 377 (7th Cir.), cert. denied, 493 U.S. 956 (1989)); *Sindram*, 986 F.2d at 1461.

This Court and some lower courts have held that court clerks are not entitled to absolute immunity for performance of "ministerial," nondiscretionary functions. See, *e.g.*, *Antoine* v. *Byers & Anderson, Inc.*, 113 S. Ct. 2167 (1993); *Lowe* v. *Letsinger*, 772 F.2d 308, 313 (7th Cir. 1985). The relevant point, however, is not that judicial officers or employees are always entitled to absolute immunity, but is that the answer to that question hinges on the extent to which their actions parallel that of judges, not law enforcement officers, who never receive absolute immunity for their actions taken in the field. See, *e.g.*, *Anderson* v. *Creighton*, 483 U.S. 635 (1987); *Malley*, 475 U.S. at 339-46.

magistrate's error" -- or that of the magistrate's clerk -- "rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Leon*, 468 U.S. at 921 (footnote omitted). Here, the failure to correct the computer record was due to an error by the clerk of the Central Phoenix Justice Court, not the Maricopa County Sheriff's Office. This Court's decisions in *Leon* and *Sheppard* therefore are directly applicable here.

The court below saw a difference between *Leon* and *Sheppard*, in which a search warrant existed, but was later held invalid, and this case, in which no warrant existed when respondent was arrested, since it had been quashed. That distinction, however, is immaterial. Neither an outstanding but invalid warrant nor a valid but recalled warrant can justify an arrest; that much is true. But the point is in each case a court found probable cause to exist and the officers involved reasonably relied on that finding. Since the exclusionary rule cannot be expected to deter reasonable police conduct, applying that rule in this case cannot contribute to its deterrent purpose. What it will do (ironically, but predictably) is induce in the police exactly the type of disrespect for the law that generates hostility to Fourth Amendment values -- the precise opposite of the rule's hoped-for effect. Accordingly, because the suppression of evidence in a case like this one cannot measurably contribute toward deterrence of police misconduct and since the exclusionary rule should be applied only when that safely can be said, there is no reason to treat this case differently from *Leon* and *Sheppard*.

b. The evidence in this case does not establish any police misconduct. The East Phoenix Justice Court issued a warrant for respondent's arrest, but the recall of that warrant by the Central Phoenix Justice Court was not communicated to Officer Sargent before respondent was arrested. Testimony by officials from the county court clerk's and sheriff's offices indicated that the error was the fault of the clerk's office, which failed to notify the

sheriff's office about the recall. J.A. 29-34, 39-40. Because it was standard procedure for those officials to place a notation in the file when such a call has been made, the absence of any such notation in the court and sheriff's files raises a presumption that there was no such call. Although both officials found it possible that a call was made but not recorded, J.A. 29-32, 42-43, their willingness to say that this scenario was "possible" is far from proof that it was likely. Also, the Arizona Court of Appeals found the clerk's office at fault, and the Arizona Supreme Court did not disturb that finding. Under these circumstances, it is reasonable to conclude that the clerk's office was negligent, not law enforcement. Suppression is therefore inappropriate.

2. *The exclusionary rule should not be applied when an officer arrests a suspect based on a facially valid report that there is a warrant outstanding*

The judgment below also could be reversed on an alternative ground: namely, since it was reasonable for Officers Sargent and Lumley to rely on the radio report that respondent was subject to arrest, the exclusionary rule should not be applied, because the costs of exclusion outweigh whatever marginal benefits might attend suppression.

In *Whiteley* v. *Warden*, this Court first addressed the subject of an arresting officer's reliance on a police radio report that there is a warrant for a suspect's arrest. There, a state magistrate issued an arrest warrant based on a complaint that failed to establish probable cause. Information about the warrant was transmitted over a statewide radio network, was received by a county's sheriff's office, and was communicated to a local police department. Relying on that bulletin, a patrolman arrested Whiteley and found incriminating evidence in an ensuing search. Although the Court held that the arrest was unlawful because the officer who originally obtained the warrant lacked probable cause to arrest Whiteley, the

Court noted that the arresting officer had acted in good faith. 401 U.S. at 562-68. As Justice Harlan explained for the Court:

> We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

Id. at 568. *Whiteley* therefore clearly indicated that the arresting officer could not be faulted for relying on the police radio broadcast that there was an outstanding arrest warrant for the suspect, even though the arrest itself violated the Fourth Amendment.

The Court elaborated on that point in *United States* v. *Hensley*. The Court in that case held that a police officer is entitled briefly to stop and question a person listed in a police "flyer" as wanted for questioning about a robbery. This Court held that a police flyer is sufficient to justify a detention by an officer lacking any personal knowledge of the crime as long as the officers who issued the flyer had reasonable suspicion. 469 U.S. at 231. At the same time, the Court added that patrol officers should not be held blameworthy for detaining a suspect based on a police flyer even if there were no reasonable suspicion to support it. As the Court put it: "In such a situation, of course, the officers making the stop may have a good faith defense to any civil suit." *Id.* at 232, citing, inter alia, *Turner* v. *Raynes*, 611 F.2d 92, 93 (5th Cir.), cert. denied, 449 U.S. 900 (1980). In *Turner*, the Fifth Circuit held that an officer who executes a facially valid warrant is entitled to qualified immunity even if the warrant is later held invalid,

since it is unworkable to expect officers to determine the ultimate legal validity of warrants that appear regular before serving them. 611 F.2d at 93. This Court in *Hensley* therefore signalled (albeit in dictum) that a police officer should not be held liable in a damages action under 42 U.S.C. 1983 for relying on a facially valid police radio report that a suspect is wanted for questioning or is subject to arrest. Other courts have endorsed that reasoning in granting qualified immunity to officers who make arrests in reliance on erroneous computer information.[8] Cf. *Baker* v. *McCollan*, 443 U.S. 137, 145-46 (1979).

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[8] For example, in *Taggart* v. *County of Macomb*, 587 F. Supp. 1080 (E.D. Mich. 1982), a state trooper ran a routine license check through the Law Enforcement Information Network (LEIN). The check resulted in a report that there was an outstanding arrest warrant for the plaintiff, which due to some apparent oversight was not canceled or removed from LEIN six months earlier. The court found that the trooper "acted with reasonable grounds and in good faith in arresting the plaintiff." *Id.* at 1081. The court believed that "a LEIN check is an authoritative source upon which law enforcement officers may justifiably rely in making an arrest." *Id.* The court held "as a matter of law, that absent actual knowledge that an arrest warrant is no longer valid or in effect, it is reasonable for a law enforcement officer to make an arrest based upon information received through the LEIN system." *Id.* at 1082. Requiring the police independently to verify information they receive would place a "stranglehold" on their effectiveness. *Id.*

Similarly, in *Lauer* v. *Dahlberg*, 717 F. Supp. 612 (N.D. Ill. 1989), aff'd, 907 F.2d 152 (7th Cir. 1990), an officer arrested the plaintiff based on a warrant check through the Law Enforcement Data System (LEADS), which indicated that there was an outstanding warrant for the plaintiff's arrest. Apparently, the arrest warrant had been recalled the previous day, but the computer information had yet to be corrected. The plaintiff showed the officer his copy of the warrant recall order at the time of the arrest. Nevertheless, the court held as a matter of law that the defendant was entitled to rely on the information obtained through the LEADS check. Showing the officer a copy of a warrant recall, the court reasoned, is not sufficient to result in the officer having actual knowledge that the warrant was invalid, because an officer in the field is not required to make a judgment as to the validity and authenticity of a recall order. *Id.* at 614. Here, of course, Officer Sargent had no notice of any potential problem with the warrant.

Those decisions go a long way toward the correct resolution of this case, because the issue whether a police officer is entitled to qualified immunity for an unconstitutional search or seizure is not materially different from the question whether the exclusionary rule requires the suppression of evidence for the same conduct. Indeed, this Court has drawn a parallel between the two situations. For example, in *Malley* v. *Briggs*, 475 U.S. at 339-46, this Court ruled that a police officer could be entitled to qualified immunity for obtaining and relying on an arrest warrant later found invalid. In *Mitchell* v. *Forsyth*, 472 U.S. 511 (1985), and *Anderson* v. *Creighton*, 483 U.S. at 644, this Court held that law enforcement officers could receive qualified immunity for conducting an unlawful warrantless search. When those cases are read together with this Court's observations in *Whiteley*, 401 U.S. at 568, and *Hensley*, 469 U.S. at 232, that a police officer should not be held liable for relying on a radio report of the existence of an arrest warrant later held invalid, it is clear that Officers Sargent and Lumley should not be held liable in damages for the arrest of respondent. That conclusion is important because this Court made clear in *Malley* v. *Briggs* that "the same standard of objective reasonableness" governing the qualified immunity analysis under *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), defines the good faith inquiry under *Leon*. 475 U.S. at 344-45. In other words, if Officers Sargent and Lumley should not have to pay in damages for someone else's mistake about the warrant for respondent's arrest, as this Court indicated in *Whiteley* and *Hensley*, then society should not have to pay in the suppression of evidence for the same mistake, as this Court indicated in *Malley*. Considered from either perspective, the officers were entirely blameless and acted reasonably, and neither they nor society should be penalized for any mistake that occurred.

That conclusion makes sense. As this Court explained in *Malley*, courts ought to be less willing to apply the exclusionary rule for unlawful police conduct than to hold an officer personally liable in damages for an unconstitutional search or seizure. On the one hand, the Court

wrote, "[w]hile we believe that the exclusionary rule serves a necessary purpose, it obviously does so at a considerable cost to society as a whole, because it excludes evidence probative of guilt." 475 U.S. at 344. On the other hand, "a damages remedy for an arrest following an objectively unreasonable request for a warrant imposes a cost directly on the officer responsible for the unreasonable request, without the side effect of hampering a criminal prosecution." *Id.* Also, a damages remedy "benefit[s] the victim of police misconduct one would think most deserving of a remedy -- the person who in fact has done no wrong, and has been arrested for no reason, or a bad reason." *Id.* In other words, damages directly compensate the victim of police misconduct and impose their cost on the blameworthy party (the offending officer), whereas suppression achieves its (presumed) benefit indirectly while imposing a cost on the blameless (society). For that reason, if it is inappropriate under *Harlow* to make an officer pay damages, it is unreasonable under *Leon* to make society pay through suppression.

Finally, some weight should be given to the fact that society does not wish to deter (and, in fact, affirmatively wishes to encourage) police reliance on radio reports that an arrest warrant exists for a suspect. Law enforcement has made increasingly widespread use of computers as data banks for information.[9] For example, the National Crime

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[9] See, *e.g.*, *People* v. *Fields*, 785 P.2d at 612 n.2; Office of Technology Assessment, *A Preliminary Assessment of the National Crime Information Center and the Computerized Criminal History System* (1978); FBI Law Enforcement Bulletin (Feb. 1972); J. Taylor DeWeese, *Reforming our "Record Prisons": A Proposal for the Federal Regulation of Crime Data Banks*, 6 Rutgers-Camden L.J. 26, 30 & n.20 (1974); Patrick Hand, Note, *Probable Cause Based on Inaccurate Computer Information: Taking Judicial Notice of NCIC Operating Policies and Procedures*, 10 Fordham Urban L.J. 497, 497, 507 (1982); Judith J. Rentschler, Note, *Garbage In, Gospel Out: Establishing Probable Cause Through Computerized Criminal Information Transmittals*, 28 Hastings L.J. 509, 509 & n.2, 512 (1976); Note, *Extradition: Computer Technology and the Need to*
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Information Center (NCIC), established in 1967 and managed by the Federal Bureau of Investigation, functions as a centralized computer bank for use by criminal justice agencies by the federal government and by state and local officials in all 50 states, the District of Columbia, as well as Canada. Among other functions, the NCIC is a valuable investigative tool for law enforcement, because it keeps track of stolen vehicles, boats, securities, license plates, guns, as well as persons for whom there is an outstanding arrest warrant. In addition, a separate division of the NCIC contains computerized criminal histories of offenders. Reliance on such computer systems immeasurably enhances the efficiency of law enforcement. Indeed, such routine cooperation among law enforcement authorities is eminently desirable. "Only by such interchange of information can society be adequately protected against crime." *United States* v. *Alvarez-Sanchez*, 114 S. Ct. 1599, 1605 (1994)(citation omitted).

The lower courts have found such reliance valuable. For instance, the courts have uniformly held that obtaining a "hit" on an NCIC list is a powerful factor in establishing justification for an arrest.[10] Indeed, some courts have gone

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[9](...continued)
Provide Fugitives with Fourth Amendment Protection in Section 1983 Actions, 65 Minn. L. Rev. 891, 891 n.1, 897-99 & n.35 (1981). Relying on a study of New York's computerized criminal history information system, Donald L. Doernberg & Donald H. Zeigler, *Due Process Versus Data Processing: An Analysis of Computerized Criminal History Information Systems*, 55 N.Y.U. L. Rev. 1110 (1980), several courts have criticized such systems on the ground that most "rap sheet" entries are incomplete or inaccurate. That study, however, is almost 15 years old. Moreover, rap sheets, compilations of a person's criminal history, could be more error prone than a list of outstanding warrants.

[10] See, *e.g.*, *United States* v. *Davis*, 568 F.2d 514 (6th Cir. 1978); *United States* v. *Hines*, 564 F.2d 925, 927-28 (10th Cir. 1977), cert. denied, 434 U.S. 1022 (1978); *United States* v. *Palmer*, 536 F.2d 1278, 1283 (9th Cir. 1976); *United States* v. *Williams*, 440 F.2d 1235 (6th Cir.), cert. denied, 404 U.S. 837 (1971); *United States* v. *Nolan*,
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so far as to say that "NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause for arrest." *United States* v. *McDonald*, 606 F.2d 552, 554 (5th Cir. 1979). The reason is that the police are entitled to be judged on the basis of "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," *Hill* v. *California*, 401 U.S. 797, 804-05 (1971) (quoting *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949)); cf. *Illinois* v. *Rodriguez*, 497 U.S. 177 (1990), and it is reasonable to rely on a police report that there is a warrant for a suspect's arrest. If so, it makes little sense to penalize law enforcement through the exclusionary rule for engaging in reasonable conduct, because that is precisely what we desire the police to undertake. It would be irrational to expect them to act differently. See *Leon*, 468 U.S. at 919.

Consider the alternative. Must the police, after lawfully stopping a suspect for a traffic offense (or for some other matter) disregard a report that there is an outstanding arrest warrant for the suspect and permit him to drive away? To paraphrase *Whiteley* v. *Warden*, it would be poor police work for officers simply to shrug their shoulders and permit the suspect to flee. The real lesson of *Mapp* v. *Ohio* -- and the one that the court below should have taken from that case -- is that "[t]here is no war between the Constitution and common sense." 367 U.S. at 657. The Constitution should demand no such illogical and unfortunate result.

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[10](...continued)
416 F.2d 588 (10th Cir.), cert. denied, 396 U.S. 912 (1969); *United States* v. *Avery*, 418 F. Supp. 263, 264 (W.D. Okla. 1976); *Wright* v. *State*, 343 So. 2d 795, 798 (Ala. Crim. App. 1977); *Thomas* v. *State*, 297 So. 2d 850, 852 (Fla. Ct. App. 1974); *Commonwealth* v. *Riley*, 425 A.2d 813, 815-16 (Pa. Super. Ct. 1981).

CONCLUSION

The judgment of the Supreme Court of Arizona should be reversed.

Respectfully submitted.

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